ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
LARRY D. VAUGHT, JUDGE

DIVISION IV

CA06-836

April 25, 2007

DENNIS COLLINS
APPELLANT

V.

ARKANSAS DEPARTMENT OF HEALTH & HUMAN SERVICES
APPELLEE

APPEAL FROM THE NEVADA COUNTY CIRCUIT COURT
[JV-03-21-2]

HON. DUNCAN CULPEPPER, CIRCUIT JUDGE

AFFIRMED; MOTION TO BE RELIEVED GRANTED

Dennis Collins appeals an order of the Circuit Court of Nevada County terminating his parental rights to his minor child, DC. Collins's attorney filed a motion asking to be relieved as counsel and a no-merit brief pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004)[1] and Arkansas Supreme Court Rule

[1]In *Linker-Flores*, the supreme court described the procedure for withdrawing as counsel from a termination-of-parental-rights appeal: "[A]ppointed counsel for an indigent parent on a first appeal from an order terminating parental rights may petition this court to withdraw as counsel if, after a conscientious review of the record, counsel can find no issue of arguable merit for appeal. Counsel's petition must be accompanied by a brief discussing any arguably meritorious issue for appeal. The indigent party must be provided with a copy of the brief and notified of his right to file points for reversal within thirty days. If this court determines, after a full examination of the record, that the appeal is frivolous, the court may grant counsel's motion and dismiss the appeal." *Linker-Flores*, 359 Ark. at 141, 94 S.W.3d at 747–48. Subsequently the supreme court elaborated on the reviewing court's role in reviewing a petition to withdraw in a termination-of-parental-rights appeal, holding that, when the trial court has taken the prior record into consideration in its decision, a "conscientious review of the record" requires the appellate court to review all pleadings and testimony in the case on the question of the sufficiency of the evidence supporting the decision to terminate, and that only adverse rulings arising at the

4-3(j)(1). Collins was provided with a copy of his counsel's brief and submitted a list of pro se points for reversal under Arkansas Supreme Court Rule 4-3(j)(2).

Counsel's motion was accompanied by a brief listing all adverse rulings made at the termination hearing. Counsel explained why there is no meritorious ground for reversal to each ruling and discussed the sufficiency of the evidence to support the termination order based on evidence presented at all the prior proceedings that were incorporated in the record of the termination proceeding, as required by *Lewis v. Arkansas Department of Human Services*, 364 Ark. 243, ___ S.W.3d ___ (2005). After carefully examining the record, we find that counsel has complied with the requirements established by the Arkansas Supreme Court for no-merit motions in termination cases, and we hold that the appeal is wholly without merit. Consequently, we grant counsel's motion to withdraw and affirm the order terminating Collins's parental rights.

On or about April 2, 2003, appellee Department of Health & Human Services exercised a seventy-two-hour hold on minors DC and SC, removing them from the custody of their mother Tammy Cooper. The basis of the removal was that Cooper was allowing DC and SC to have contact with her husband who was a registered sex offender. The proceedings continued for nearly two years when, in December 2004, Collins established paternity of DC,[2] was added to the case as an interested party, and was appointed an attorney to represent him. The trial court instructed DHHS to formulate a case plan with regard to Collins with

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termination hearing need be addressed in the no-merit appeal from the prior orders in the case. *Lewis v. Ark. Dep't of Human Servs.*, 364 Ark. 243, ___ S.W.3d ___ (2005).

[2] Collins was never determined to be the biological father of SC, and therefore these proceedings involved only Collins's parental rights to DC.

the goal of reunifying DC with Collins. The case plan required Collins to attend counseling, attend supervised visitation, participate in a home study, keep in contact with DHHS, and notify DHHS of any changes in his residence.

In April 2005, Cooper voluntarily terminated her parental rights to DC. A few months later in July 2005, DHHS sought to terminate Collins's parental rights for failure to comply with the case plan. At a termination hearing in July 2005, the trial court denied DHHS's petition finding that Collins's attorney had only been representing Collins since December 7, 2004, and Collins had not had an adequate opportunity to prepare for a termination hearing or sufficient time to comply with the case plan and orders of the court.

Later that month at a review hearing, which Collins failed to attend, the trial court found that Collins had resumed a relationship with Cooper and that he failed to comply with the case plan. The trial court then directed DHHS to file a petition to terminate Collins's parental rights, which was filed on November 14, 2005.

Another termination hearing was held on December 6, 2005, where the case worker assigned to DC's case testified that while Collins regularly attended visitation with DC, he did not comply with the rest of the case plan—he did not have the home study completed, he failed to attend counseling, he failed to keep in contact with the department, and he failed to inform the department of any change in his residence. The case worker opined that termination was in the best interest of DC because she needed stability that Collins could not provide. Moreover, the case worker testified that DC is adoptable. In fact, according to the case worker, there was a family willing to adopt DC.

Collins testified that he maintained employment during the past six months and was living in an apartment. He testified that his house had recently burned down[3] and that the paperwork for the purchase of a house had already been drawn. However, he conceded that he did not know the address of this new home and that he could not buy a house until he first sold some land. He further testified he had not seen Cooper in over a month. Collins denied that he failed to remain in contact with DHHS, stating that on one occasion while staying with Cooper at a motel, she called in to DHHS on his behalf.

On January 24, 2006, the trial court entered an order terminating the parental rights of Collins. From our review of the record and brief presented to us, we cannot say that the trial court erred. Collins failed to comply with every component of the case plan except for visitation. He failed to attend counseling, to complete a home study, to keep in contact with DHHS, and to notify DHHS of any change in his residence. Further, the evidence demonstrated that Collins continued contact with Cooper, who not only voluntarily terminated her parental rights to DC, but also continued to have contact with a registered sex offender. We therefore hold that the evidence sufficiently supports the order terminating Collins's parental rights.

We agree with counsel that, at the December 2005 termination hearing, there were only two rulings adverse to Collins. The first adverse ruling arose when Collins requested a continuance because he had "only officially been a party for a very short time." The trial court denied the motion. We hold that this was not error in that Collins was added as an

[3] This was the second home of Collins's to burn down within a one-year period.

interested party to the case in December 2004—at which time he was also appointed counsel—and therefore had one year to comply with the case plan and prepare for the termination hearing. In addition, we note that the trial court was sensitive to Collins's need for sufficient time to prepare his case with his counsel as that was the basis of the trial court's denial of DHHS's July 2005 petition to terminate Collins's parental rights.

The second adverse ruling arose in response to Collins's objection to the question of the case worker: "Do you have any knowledge if Mr. Collins is still seeing Cooper?" The case worker answered "no" and then Collins objected stating that the question called for speculation. The trial court noted that the answer to the question was "no" and then overruled the objection. We hold that this ruling was proper. A witness is permitted to testify about her personal knowledge. *See* Ark. R. Evid. 701.

Collins's list of pro se points is not persuasive. For reversal he contends that the department "told lies" on him; he is getting married to "April," who said she would be DC's step-mother; he has been living in an apartment for over a year; he has been working for a year with the same employer; and he has not abandoned DC. The majority of the arguments made in Collins's pro se points are the same arguments he made to the trial court; these points do not present any arguments different from those discussed in counsel's brief. The new arguments made by Collins in his pro se points—that he did not abandon DC and that he is getting married—are issues of fact or credibility. This court does not make factual determinations, and credibility issues are left within the sound discretion of the trial judge. *Camarillo-Cox v. Ark. Dep't of Human Servs.*, 360 Ark. 340, 201 S.W.3d 391 (2005).

After carefully examining the record, we hold that counsel has complied with the requirements established by the Arkansas Supreme Court for no-merit briefs in termination cases, and we hold that the appeal is wholly without merit. Accordingly, we affirm the order terminating Collins's parental rights and grant counsel's motion to withdraw.

Affirmed; motion to be relieved granted.

GLADWIN and BIRD, JJ., agree.